

L.....T.....T.....T.....T.....T.....T.....T.....T...((HDR 0
.. # ..
.HE 1

SPECIAL CIVIL APPLICATION NO. 3752 OF 1982

Date of Decision : 12.2.1996

For Approval & Signature
THE HON'BLE MR. JUSTICE A.R DAVE
AND
THE HON'BLE MR. JUSTICE

1. Whether reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

Mr. D.U.Shah , learned Advocate for the Petitioner
Mr. Ashish Desai , learned AGP for the Respondents.

CORAM : A.R DAVE, J.
12.2.1996

ORAL JUDGMENT :

The petitioner- retired Dy. District Development Officer has approached this Court with a grievance that he was superceded in 1969 and was thus denied promotion in Gujarat Development Service ('GDS' for short) Cl.I. He has submitted that his immediate junior Shri Dholakia was promoted in GDS Cl.I in 1969 and, therefore, he ought to have been promoted in GDS Cl.I in 1969.

It is an admitted fact that the petitioner was subsequently promoted in GDS Cl.I vide Government. notification dated 27th March 1978.

Upon perusal of affidavit-in-reply dated 24th November 1983 filed by the Under Secretary, Government. of Gujarat in Housing and Urban Development Department, it is clear that the case of the petitioner for his promotion was duly considered by the Selection Committee, but as the petitioner was not found suitable for promotion, he was superceded. It has been specifically stated in para-4 of the reply that the Selection Committee had met between 1965 and 1976 and on every occasion, the case of the petitioner was considered, but as the petitioner was not found meritorious enough to be promoted, he was not promoted. It is also an admitted position that the promotion to GDS Cl.I service is on the basis of " proved merit and efficiency ".

The petitioner had filed affidavit-in-rejoinder stating the fact that the above-referred averments made in para-4 of the affidavit-in-reply are not correct for the reason that the Selection Committee was constituted for the first time by the State Government under its notification dated 30th October 1971. Thus, according to the petitioner, the case of the petitioner could not have been considered prior to 30th October, 1971.

Learned Advocate Shri D.U.Shah has vehemently argued that the case of the petitioner ought to have been reconsidered in view of the fact that the punishment which was imposed upon the petitioner on 4th May 1976, was ultimately quashed and set aside in pursuance of the

order passed by this Court in Spl. Civil Application No. 272 of 1977. According to Mr. Shah, due to alleged irregularities committed by the petitioner in 1969, departmental proceedings had been initiated against the petitioner and ultimately, by the order dated 4th May 1976, the petitioner was punished and his one increment for one year was stopped. The petitioner had challenged the validity of the said order by filing Spl. Civil Application No. 272 of 1977 in this Court and the said petition was ultimately allowed and the above-referred order of punishment was quashed and set aside.

According to Shri Shah, pendency of inquiry was the only reason for not promoting the petitioner after 1969 when his immediate junior Mr. Dholakia was given promotion. According to Shri Shah, as ultimately the petitioner was exonerated of the charges levelled against him, the petitioner ought to have been given promotion from the date on which his immediate junior was promoted.

In view of the above-referred averments made by the parties, the Government was directed to produce relevant record pertaining to minutes of the Committee.

In pursuance of the above-referred directions, record pertaining to the case was produced before this Court on 12.2.1995. Upon perusal of the record, it is clear that the Selection Committee had convened meetings as stated in para-4 of the affidavit-in-reply filed by the Under Secretary to the Government of Gujarat, Panchayat, Housing & Urban Development Department. The Committee had also convened its meeting before 30th October 1971 and, therefore, the averments made by the petitioner in affidavit-in-rejoinder are not correct.

It has also been found from the record that the case of the petitioner was duly considered for his promotion as and when the Selection Committee had convened its meeting between 1965 and 1976. It is also clear that though the petitioner was facing departmental proceedings at the time when his case was considered for his promotion, the committee had duly considered the case of the petitioner, but as the petitioner was not found meritorious enough to be promoted to the higher post, the petitioner was not recommended for promotion. It is thus not true that the petitioner was not promoted because he was facing departmental proceedings.

It is thus clear that though the petitioner was facing inquiry proceedings, the reason for not promoting

the petitioner was not pendency of the inquiry. As stated hereinabove, promotion to GDS Cl.I post is given only on the basis of " proved merits and efficiency " and as the Committee did not find the petitioner meritorious enough to be promoted to the higher post, the petitioner was rightly superceded and his immediate junior Shri Dholakia was promoted. In the above-referred circumstances, the submission made by the learned Advocate Shri D.U.Shah with regard to the petitioner's succeeding in Spl. Civil Application No. 272/71 would not help the petitioner in the matter of his promotion.

It is an admitted legal position that when the basis for promotion is " proved merits and efficiency ", an employee has a limited right of being considered for promotion to the higher post. If the employee is not found fit for promotion or is not meritorious enough to be promoted, he cannot claim any right to be promoted. It is clear from the record that the petitioner's case was duly considered for promotion, but he was not found meritorious enough to be promoted as per the relevant rules and regulations and, therefore, he was superceded. It is also pertinent to note that recommendation of the Selection Committee was accepted by the Gujarat Public Service Commission on every occasion in the matter with regard to the petitioner's case for his promotion.

No legal, much less any fundamental right, of the petitioner has been violated. As the case of the petitioner was duly considered and he was not found meritorious enough to be promoted, the respondent government cannot be directed to give promotion to the petitioner from the date on which his immediate junior was promoted.

Under the circumstances, the petition is dismissed. Rule is discharged with no order as to costs.
